

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
CASCADE CULVERT, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 82-188

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.03(b) of respondent's Regulation I, came before the Pollution Control Hearings Board, Gayle Rothrock, Chairman, Lawrence J. Faulk (presiding) and David Akana, Board members, at a formal hearing in Lacey on January 11, 1983.

Respondent was represented by its attorney, Keith D. McGoffin, appellant Cascade Culvert, Inc., was represented by Robert Showalter, Production Manager. The proceedings were electronically recorded.

Having heard the testimony, having examined the exhibits and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a  
5 certified copy of its Regulation I and amendments thereto, which are  
6 noticed.

7 II

8 On September 27, 1982, at about 11:09 a.m., respondent's inspector  
9 noticed a white plume rising from appellant's plant located at 6525 -  
10 188th Street N.E., Arlington, Washington, in Snohomish County. The  
11 wind direction was primarily from a western direction. The sky was  
12 generally overcast. The inspector positioned himself south of the  
13 plant at a distance of about 600 feet to observe the plume. The  
14 inspector recorded opacities ranging from 30 percent to 40 percent for  
15 ten consecutive minutes. The inspector then visited appellant's plant  
16 and explained Regulation I, Section 9.03(b)(2) to Mr. Joe Freelove,  
17 Plant Manager

18 III

19 After inspecting the hot asphalt dip tank and determining it was  
20 the source of the plume, the inspector issued Notice of Violation No.  
21 18795 at 11:42 a.m., on September 27, 1982. On October 20, 1982,  
22 respondent sent to appellant by certified mail a Notice and Order of  
23 Civil Penalty No. 5657 of \$250 for the alleged violation of Section  
24 9.03(b) of respondent's Regulation I. The Notice and Order of Civil  
25 Penalty, is the subject of the appeal.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No 82-188

IV

Section 9.03(b) of respondent's Regulation I makes it unlawful for any person to cause or allow the emission of any air contaminant for a period or periods aggregating more than three minutes in any one hour which is:

- (1) Darker in shade than that described as No. 1 (20% density) on the Ringelmann Chart, as published by the United States Bureau of Mines; or
- (2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in Subsection 9.03(b)(1).

Section 9.03(e) provides that "this section shall not apply when the presence of uncombined water is the only reason for the failure of the emission to meet the requirements of this section."

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board enters these

CONCLUSIONS OF LAW

I

The Clean Air Act through Regulation I provides that opacity which obscures an observer's view to a degree equal to or greater than 20% density is prohibited. Respondent established that this was the case on September 27, 1982. Appellant asserts that the emissions seen were mostly water. Even if this were true, the emissions are not excused under Section 9.03(e) since that section applies to uncombined water.

1 Appellant did not follow the 9.16 procedure<sup>1</sup> of Regulation I for  
2 start-ups and therefore the provision does not apply. Appellant was  
3 convinced that the emissions caused no harm, and therefore, no  
4 violation occurred. The statute and Regulations, however, do not  
5 require evidence of actual harm. The Board concludes that Appellant  
6 violated Section 9.03(b)(2) on September 17, 1982, as alleged.  
7 Accordingly, Civil Penalty (No. 5657) was properly assessed.

## 8 II

9 Appellant has a record of one previous violation of Regulation I,  
10 the penalty for which was waived by respondent. The instant penalty  
11 is reasonable in amount. But given Appellant's record and its efforts  
12 to find a solution to its emissions, one-half of the penalty should be  
13 suspended.

14  
15 1. Emissions exceeding any of the limits  
16 established by this Regulation as a direct result of  
17 start-ups, periodic shutdown, or unavoidable and  
18 unforeseeable failure or breakdown, or unavoidable  
19 and unforeseeable upset or breakdown of process  
20 equipment or control apparatus, shall not be deemed  
21 in violation provided the following requirements are  
22 met:

23 (1) The owner or operator of such process  
24 or equipment shall immediately notify the Agency of  
25 such occurrence, together with the pertinent facts  
26 relating thereto regarding nature of problem as well  
27 as time, date, duration and anticipated influence on  
emissions from the source.

(2) The owner or operator shall upon the  
request of the Control Officer, submit a full report  
including the known causes and the preventive  
measures to be taken to minimize or eliminate a  
re-occurrence.

(Emphasis added.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

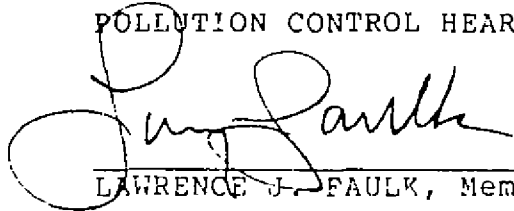
From these Conclusions the Board enters this

ORDER

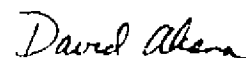
Order and Notice of Civil Penalty No. 5657 for \$250 issued to Cascade Culvert, Inc., in violation of respondent's Regulation I is hereby affirmed provided, however, that \$125 of the amount is suspended on condition that appellant not violate any provision of Regulation I for a period of one year from the entry date of this order.

DONE at Lacey, Washington, this 17<sup>th</sup> day of January, 1983.

POLLUTION CONTROL HEARINGS BOARD

  
LAWRENCE J. FAULK, Member

See Concurrence & Dissent  
GAYLE ROTHROCK, Chairman

  
DAVID AKANA, Lawyer Member

1 POTTHROCK, Member, Concurring and Dissenting in part

2  
3 I concur with the findings, conclusions and order except for the  
4 suspension of any portion of the penalty. I would affirm respondent's  
5 action and the \$250 civil penalty.  
6  
7

8   
9 GAYLE ROTHROCK, Chairman